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8
9 **IN THE SUPERIOR COURT OF STATE OF ARIZONA**
10
11 **IN AND FOR THE COUNTY OF YAVAPAI**

12 **STATE OF ARIZONA,**

13 **Plaintiff,**

14 **v.**

15 **STEVEN CARROLL DEMOCKER,**

16 **Defendant.**

Cause No. P1300CR20081339

Division 6

**STATE'S BENCH MEMORANDUM ON
JUROR MISCONDUCT**

17 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney,
18 and her deputy undersigned, hereby submits its bench memorandum regarding juror
19 misconduct.

20 The granting of a new trial on the basis of jury misconduct is a matter within the sound
21 discretion of the trial court. *State v. Rocco*, 119 Ariz. 27, 579 P.2d 65 (App.1978). In this case
22 the Judge conducted an investigation of Juror # [REDACTED] The Juror satisfied the court that he can be
23 fair and impartial and can adhere and will adhere to the admonition. The Juror denied making
24 any comment about defense counsel [REDACTED] He indicated that he continues to be open-
25 minded about the case and had not made up his mind. He told the Judge and attorneys that at
26 other times other jurors would begin discussing the case or the evidence and the other jurors

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1 would "shush" the offending jurors and all discussion would cease. This demonstrates that all
2 the Jurors, including Juror # know and understand the importance of the admonition.

3 This Court has conducted an evidentiary hearing concerning this juror in chambers. It
4 is soundly within the judge's discretion to keep or remove a juror for failure to abide by the
5 admonition. In *State v. Miller*, 178 Ariz. 555,875 P.2d 788 (1994) the Arizona Supreme Court
6 found that communication from an alternate juror that had been dismissed to a juror that was
7 deliberating on the case was improper. There is no such alleged improper communication in
8 the case at bar. In *Miller*, id, the court held that the trial court abused its discretion in denying
9 the defense request for an evidentiary hearing. If the hearing that has been held in chambers in
10 the case at bar is deemed to be insufficient, it is respectfully requested that all jurors be
11 questioned individually concerning Juror #'s conduct, rather than allow unsubstantiated
12 allegations by one other juror to dictate whether Juror # remains on the jury. No actual
13 prejudice has been found or can be presumed from the facts adduced in the in chambers
14 evidentiary hearing.
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18 RESPECTFULLY SUBMITTED this 2nd day of August, 2010.
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20
21 Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

22
23 By: _____

24 Joseph C. Butner
Deputy County Attorney
25
26

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COPIES of the foregoing delivered this
2nd day of August, 2010 to:

Honorable Warren R. Darrow
Judge of the Superior Court
(via email)

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